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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,992	03/11/2004	Eric R. Buhrke	CML01339T	5169
22917	7590	01/24/2006	EXAMINER	
MOTOROLA, INC. 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196			STORM, DONALD L	
			ART UNIT	PAPER NUMBER
			2654	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/797,992	<b>Applicant(s)</b> BUHRKE, ERIC R.	
	<b>Examiner</b> Donald L. Storm	<b>Art Unit</b> 2654	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☒ They raise the issue of new matter (see NOTE below);  
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-14.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
 13. ☒ Other: See Continuation Sheet.

  
 Donald L. Storm  
 Examiner  
 Art Unit: 2654

## Continuation of 3. NOTE:

The proposed amendment will not be entered because it does not prima facie place the application in condition for allowance. The proposed amendment will not be entered because it is not deemed to materially reduce or simplify the issues for appeal. The proposed amendment presents new issues not previously addressed.

Additional search would be required because the new claim limitations and new combinations of claim limitations requiring at least (1) a audio speech signal from which frames of information are derived and, (2) deriving a set of generated visemes from a time domain frame classification vector, and (3) the "thereby" relationship between deriving and the frames presents new issues. Whether the "thereby" relationship between deriving and the frames establishes a limitation that was not previously examined in its proposed context must be considered.

Whether all dependent claims now distinctly claim the invention in light of the new claim imitation must be considered, and patentability in view of combinations of references already of record must be reconsidered. Sufficiency of disclosure as originally filed would require reconsideration. .

## Continuation of 11. does NOT place the application in condition for allowance because:

The Applicant contends that Basu, Sutton, and other prior art do not describe or make obvious every aspect of the independent claims, and apparently argues as follows:

- a. argues that Basu does not describe the subject matter of the proposed amendment to the claims. This argument is not persuasive because is directed to subject matter that has not been entered.
- b. argues that Sutton does not generate one set of visemes from a vector based on one frame of audio. This argument is not persuasive because neither the current claims nor the proposed claims recite this feature.
- c. argues that Sutton does not generate visemes at a 10 msec frame rate. This argument is not persuasive because neither the current claims nor the proposed claims recite this feature.
- d. argues that claim 1 makes it clear that visemes have weighted values. This argument is not persuasive because neither the current claims nor the proposed claims recite this feature.

## Continuation of 13. Other:

The portion of the amendment directed to removing the objection to claim 11 would be acceptable as placing some of the claims in better form for appeal by providing sufficient antecedent basis if a separate paper were filed containing only acceptable amendments; specifically, the proposed change to have claim 11 depend from claim 10. The addition of "audio" to claim 11 cannot be entered without presenting new issues for consideration. .